In The

Supreme Court of the United States

October Term, 1945

Nos. 8937, 8940, 8941 and 8942

Fred R. Reeves
John H. Bradley
William L. Driscoll and
Lynwood C. Fritter
Petitioners

-vs-

Chester R. Bowles, Administrator
Office of Price Administration
Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia was rendered July 9, 1945, and is incorporated in the record at Page 24.

JURISDICTION

The jurisdiction of this Court is invoked under Section

240, Judicial Code, as amended by the Act of February 13, 1925—43 Stat. 936 and the Emergency Price Control Act; 56 Stat. 23; 50 U. S. C. A. App. Sections 901-946.

STATEMENT OF CASE

The petitioners are owners of taxicabs operating in the District of Columbia. The respondent, as administrator, Office of Price Administration, filed complaints in the District Court of the United States for the District of Columbia against the Petitioners, praying for an injunction and treble damages under the provisions of the Emergency Price Control Act of 1942, Chapter 26, 56 Stat. 23; U. S. Code, Title 50, App. Section 901 et seq., alleging in substance that all of the defendants were owners of taxicabs which they rented to cab drivers at a certain sum of money per day, or other convenient periods of time, for the use of the cab drivers in their trade or business of transporting passengers for hire in the District of Columbia; that pursuant to the Emergency Price Control Act of 1942, the respondent had more than one year prior to the filing of the complaints, issued regulations establishing, among other things, the rental rate or charges for taxicabs; and that the defendants therein, among whom are these petitioners, have violated the Emergency Price Control Act of 1942, as amended, and the regulations promulgated pursuant thereto in that they (1) had failed and neglected to prepare and keep for examination by any person during ordinary business hours a statement showing ther maximum rates or charges for such rental of taxicabs, and (2) since August 1, 1943, had rented taxicabs to cab drivers for use in the course of the driver's trade or business at prices in excess of respondent's lawful ceiling prices.

The petitioners (defendants in the District Court) moved to dismiss the complaints contending: (1) that the complaints failed to state a claim against defendants upon

which relief could be granted, (2) that the defendants were engaged in the business of a public utility and a common carrier within the District of Columbia and were expressly exempted from the provisions of the Emergency Price Control Act of 1942, (3) that by a proper construction and application of the regulations issued by the Administrator, Office of Price Administration, the defendants were exempt from regulatory jurisdiction of the Office of Price Administration. The District Court overruled the motions. A special appeal was allowed by the United States Court of Appeals for the District of Columbia in which four cases were presented, it having been stipulated by the parties that the opinion of the Court in these four cases would control all the other suits.

The Court below affirmed the District Court holding, in effect, that the Court had no jurisdiction to pass upon the question of the validity of the regulation as that was a question for the United States Emergency Court of Appeals. It was held that there has been no decision by the Commission (Public Utilities Commission, District of Columbia) or any Court declaring appellants (petitioners) to be common carriers within the Public Utilities Act (District of Columbia). The Court below, obviously, ignored or overlooked the patent fact that petitioners were asking that the Court interpret and construe the applicable regulations and not pass upon their validity. Of course, had the petitioners been seeking to have the regulations declared invalid they would have filed a proper complaint in the Emergency Court of Appeals pursuant to Section 204 (a) of the Emergency Price Control Act, noting that Section 204 (d) of that Act expressly provides that the Emergency Court of Appeals and the Supreme Court upon review shall have exclusive jurisdiction to determine the validity of any regulation or order issued under Section 2 of any price schedule effective in accordance with the provisions of Section 206, and of any provision of any such regulation, order or price schedule and that no Court, Federal, State or Territorial

shall have jurisdiction or power to consider the validity of any such regulation, order or price schedule.

The petitioners contend that they are public utilities and common carriers in the District of Columbia, so classified by statute, and recognized as such by the Public Utilities Commission of the District of Columbia, and that the applicable regulations issued by the Office of Price Administration when properly construed and applied expressly exempt public utilities and common carriers from the jurisdiction of the Office of Price Administration. The petitioners did not contend that the Office of Price Administration could not regulate the rental prices of taxicabs but they did and do contend that the regulations of the Office of Price Administration involved in these cases, do not when fairly construed and applied, extend to the regulation of the rental prices of taxicabs *which are engaged in the business of a public utility and common carrier and subject to regulation by the Public Utilities Commission, as is the case here.*

QUESTIONS PRESENTED

(1) Are the petitioners common carriers and public utilities in the District of Columbia, and subject to the exclusive jurisdiction of the Public Utilities Commission?

(2) Do the regulations of the Office of Price Administration, when fairly interpreted, apply to the business of the petitioners?

SPECIFICATION OF ERRORS

The Court below erred:

(1) In holding that there has been no decision by the Commission (Public Utilities Commission) or any Court declaring appellants to be common carriers within the Public Utilities Act (District of Columbia);

(2) In failing and refusing to interpret and apply the

applicable regulations of the Office of Price Administration, which was a most vital part of the case;

(3) In holding that the question before the Court was the validity of the Office of Price Administration's regulations; and

(4) In affirming the judgment of the District Court.

STATUTES AND REGULATIONS INVOLVED

District of Columbia Code, 1940 Edition; Title 43, Sections 103, 104, 106, 111, 122, 408 and 411 to 417, inclusive. Title 47, Sections 23, 31 (a) and (d). Emergency Price Control Act of 1942, 56 Stat. 23, 50 U. S. C. A. App. Sections 901-946. Office of Price Administration Maximum Price Regulation 165, as amended, Section 1499.101 (c); (4); (60); Section 1499.116 (a), Office of Price Administration Revised Maximum Price Regulation 165, issued July 1, 1944, effective August 1, 1944; Section 1499.23 (a) (16). Maximum Price Regulation 571 promulgated January 29, 1945, effective February 3, 1945; Sections 1450.1; 1450.3, Definitions (d) and Section 1450.16; Office of Price Administration Supplementary Regulation 11, issued June 16, 1942 (7 F.R. 4543) as revised August 13, 1942 (7 F. R. 6426) as further revised by Amendment No. 45 dated March 24, 1945 (9 F. R. 1331) as again revised April 25, 1944 by amendment No. 50 (9 F. R. 5722-23).

SUMMARY OF ARGUMENT

1. The Emergency Price Control Act expressly excludes from the Administrator, Office of Price Administration, the power and authority to regulate charges by common carriers or public utilities and it is clear under the applicable judicial precedents that the business of the petitioners, and all aspects of the same, are that of common carriers and public utilities and accordingly under the exclusive

jurisdiction and regulatory power of the Public Utilities Commission of the District of Columbia.

2. The regulations of the respondent, issued pursuant to the provisions of the Emergency Price Control Act, when fairly construed and interpreted, do not apply to the business of the petitioners.

ARGUMENT

I

The petitioners are engaged in a business as a common carrier and public utility in the District of Columbia and are subject to the jurisdiction and regulatory power of the Public Utilities Commission of the District of Columbia.

The Court below in its opinion stated:

> "There has been no decision by the Commission or *any Court* declaring appellants to be common carriers within the Public Utilities Act."

In *Terminal Cab Company* vs. *Harding* 43 App. D. C. 120, 123, 124, the United States Court of Appeals for the District of Columbia in passing upon the question whether a taxicab company was a common carrier within the meaning of the Public Utilities Act and whether its business should be and is subject to regulation by the Public Utilities Act said:

> "We think the Company is a common carrier within the scope, intent and meaning of the Public Utilities Act. Its business is public, and not private, and that business should be and is subject to reasonable regulation for the benefit of the public."

Certiorari was granted in that case and this Court in *Terminal Taxicab Company vs. Kutz* 241 U.S. 252, 60 L. Ed. 984, in passing upon the question said:

> **"The plaintiffs taxicabs, when employed as above stated (are) a public utility by ancient usage and underderstanding (Mumm vs. Illinois 94 U.S. 113, 125; 24 L. Ed. 77, 84) as well as common carriers by the manifest meaning of the Act. The plaintiff is an "agency" for public use for the convenience of persons, etc.; and none the less that ~~shall~~ only convey one group of customers in one vehicle."

Thus, as long ago as February 1915, the Court below held, contrary to the opinion in this case, that the business here involved is that of a common carrier and a public utility within the Public Utilities Act, and this Court has ruled likewise.

II

The regulations of the Respondent, Office of Price Administration, when properly interpreted do not apply to the rental of Petitioners taxicabs engaged in the business of a public utility and common carrier, and subject to the exclusive regulatory jurisdiction of the Public Utilities Commission.

We are here concerned primarily with Maximum Price Regulation 165, as amended; Revised Maximum Price Regulation 165; Maximum Price Regulation 571; and Revised Supplementary Regulation 11, as amended.

Maximum Price Regulation 165 was issued June 23, 1942 effective July 1, 1942 (7 F.R. 4734)and was amended August 13, 1942 (7 F.R. 6428) and July 29, 1943 (8 F.R. 10671). In the last amendment the regulation provides that:

> Sec. 1499.101
>
> (c) *Services covered.* This Maximum Price Regulation No. 165 as amended shall apply to all rates and charges for the following services, except when such services are rendered as an employee:
>
> * * * * (4) Automotive vehicles (including but not

limited to automobiles, busses, motorcycles, semi-trailers, tractors, trailers and trucks)—lubrication, maintenance, painting, rental, ***

Sec. 1499.107

Services excepted from Maximum Price Regulation 165 as amended.

The provisions of this regulation shall not apply to the services excepted from the General Maximum Price Regulation by Revised Supplementary Regulation 4 or Revised Supplementary Regulation 11, or any amendments thereto insofar and for such time as such services are excepted from those supplementary regulations.

On August 1, 1944 Maximum Price Regulation 165 as amended—Services—was replaced by Revised Maximum Price Regulation 165 issued July 1, 1944 effective August 1, 1944 (9 F.R. 7439) the pertinent parts of which are:

"Maximum Price Regulation 165 as amended, services, is redesignated Revised Maximum Price Regulation No. 165 (Services) and is revised and amended to read as follows:

Maximum Price Regulation No. 165 as amended covered only those services specifically listed therein. Most other services subject to price control were covered by the General Maximum Price Regulation, and a relatively small number of other OPA regulations. This revision brings under Revised Maximum Price Regulation No. 165 (Services) most of the services which were heretofore under the General Maximum Price Regulation.

Sec. 1. *Services Covered.* This regulation covers the prices charged for all services except:[1] (a) Services exempted by Revised Supplementary Regulation No. 11; (b) Services sold to a governmental agency

[1]By amendment No. 3 (September 9, 1944, 9 F.R. 11173) the provision was changed to read: "This regulation covers all services previously covered by Maximum Price Regulation No. 165 as amended, Services. It also covers all other services except:"

pursuant to (1) a secret contract or subcontract as provided in Supplementary Order No. 42, and (2) an emergency purchase subject to the conditions of Sec. 4.3 (f) of Revised Supplementary Regulation No. 1; (c) Services specifically covered by other OPA regulations; (d) The following services which remain under the General Maximum Price Regulation:

(1) Transportation services of contract carriers;

(2) Storage, warehousing and terminal services, and services incident thereto.

(3) The furnishing of electricity, gas, light, heat, power or water when the furnishing thereof is not subject to the requirements set forth in paragraph (c) of Revised Supplementary Regulation No. 11, sec. 1499.46.

Sec. 2. *Prohibitions.* On and after August 1, 1944, regardless of any contract or other obligation:

(a) You may not sell any service covered by this regulation at a price higher than your maximum price.

(b) No person in the course of trade or business may buy any service covered by this regulation at a price higher than the maximum price.

Of course, you may charge lower prices than your maximum prices at any time.

Maximum Price Regulation 571 was issued January 29, 1945 effective February 3, 1945 (10 F.R. 1150). This regulation replaced and superseded the previous general "Services" regulation with respect to "rental" of certain types of commercial motor vehicles. The Statement of Considerations issued in connection with Maximum Price Regulation 571 states insofar as here applicable:

"Section 1. *General statement.* The purpose of this regulation is to establish maximum prices for the lease or rental of "commercial motor vehicles." Gen-

erally the rental of a "commercial motor vehicle" does not include the furnishing of a driver and except as hereinafter provided in section 2, the rental of a "commercial motor vehicle" with driver is covered as a transportation service by the General Maximum Price Regulation of any applicable regulation subsequently issued.

Section 2. *Services covered*—(a) *General Applicability.* This regulation applies to the lease or rental, without driver, except as hereinafter provided, of the types of commercial motor vehicles" defined in section 3 (d).

* * * *

(e) *Exceptions.* This regulation shall not apply to:

(1) The rental or lease of any dump truck used on construction or road maintenance projects.

(2) Any transaction which is a sale of a "commercial motor vehicle," as in the case of a lease which is a substitute for a conditional sales contract, and in connection with which no maintenance or operating services are furnished. However, a lease containing an option to purchase is subject to the provisions of this regulation.

(3) Any service which has been classified by a municipal, state, or federal regulatory body as a for-hire carrier service.

(4) Leasing of trucks between carriers pursuant to directions of the Office of Defense Transportation under the provisions of the Administrative Order O.D.T. 10, issued March 10, 1944, General Order O.D.T. 3 Revised, as amended March 10, 1944, and General Order O.D.T. 17, as amended March 10, 1944.

Section 3. *Definitions.* As used in this regulation.

* * * *

(d) "Commercial motor vehicle" means any passenger automobile, funeral car, hearse, taxicab, bus,

truck, tractor, trailer, or semi-trailer or any combination thereof propelled or drawn by mechanical power and constructed for the purpose of transporting property or persons."

• • • •

Sec. 16. *Relation to other regulations.* This regulation supersedes the General Maximum Price Regulation and Revised Maximum Price Regulation 165 with respect to all services covered by this regulation.[2]

This regulation establishes maximum prices for the rental of taxicabs, passenger cars, funeral cars, hearses, buses, trucks, tractors, trailers, semi-trailers and any combinations thereof.

The regulation is a segregation and restatement of the maximum price provisions relating to charges for the rental of commercial motor vehicles, whose maximum prices heretofore were determined under MPR 165 or RMPR 165. Issuance of this separate regulation devoted exclusively to this particular subject matter is designed to facilitate administrative actions, to promote compliance, and, in general, to make price control in this field more effective than has been feasible under MPR 165—Services, which covers a wide field of unrelated services."

Subsequent to the opinion of this Court in *Davies Warehouse Company vs. Bowles* 321 U.S. 144 in which this court held that the Davies Warehouse Company was a public utility, subject to state regulation, and therefore exempt from Office of Price Administration jurisdiction, the respondent issued amendments to Revised Supplementary Regulation 11 in which amendments the respondent assumed regulatory jurisdiction over rates and charges of businesses not classified or regulated as public utilities or common carriers. It is correct to say that the various regulations have been interpreted by the Office of Price Administration as

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[2]The basic pricing provisions, as in the preceding Regulations, establish the March 1942 "base date" or "freeze" (Sec. 4). Provision is also made for adjustments (Sec. 13), and records and reports (Sec. 15).

bringing within its regulatory jurisdiction the rental of taxicabs. However, none of the regulations establishes jurisdiction in the Office of Price Administration over charges, rates or rentals of taxicabs *which are engaged in the business of a public utility and a common carrier, classified as such, and subject to the jurisdiction and regulatory power of a duly constituted Public Utilities Commission—as is most assuredly the case here.* District of Columbia Code 1940 Edition, Title 43, Sec. 103 et seq., and Title 47, Sec. 2331 (a), (d). See also order of the Public Utilities Commission of the District of Columbia dated April 24, 1942 for an investigation into the matter of rentals, charges and practices of taxicab companies and associations—Public Utilities Commission No. 2942-149 Formal Case 319:

ORDER OF INVESTIGATION

"In order to establish fair and reasonable rentals, charges and practices among and between the various taxicab companies, associations, and others, and their members, lessees, operators and drivers, and to prevent any charges or practices which are unfair or otherwise interfere with the operations of taxicabs as a public utility.

IT IS ORDERED:

Section 1. That an investigation be instituted into the terms, conditions and reasonableness of, and practices relating to,

(a) Contracts, agreements or understandings covering the rentals and sales of taxicabs by companies and associations or their subsidiaries to drivers, operators, members or lessees during the period from January 1, 1941 to date.

(b) Contracts, agreements or understandings covering, all practices relating to, the purchase of gasoline, oil, tires, accessories, insurance, etc. by drivers, operators, lessees from taxicab companies, associations or their subsidiaries.

(c) Requirements of, dues for and benefits derived

from, membership in taxicab associations.

(d) Any other contracts, agreements, understandings or practices, not specifically provided for herein, affecting or relating to the operations of taxicabs in the District of Columbia.

Section 2. That the cost of this investigation shall be assessed against the taxicab companies, associations or others investigated on the basis of the number of cabs involved, in accordance with an order to be issued.

Section 3. That this order take effect immediately.

By the Commission:
E. J. MILLIGAN,
Executive Secretary."

This is conclusive that the Public Utilities Commission has recognized and exercised its jurisdiction over the subject matter here involved.

CONCLUSION

The petitioners are engaged in the business of a public utility and common carrier and are under the exclusive jurisdiction of the Public Utilities Commission in the District of Columbia. Accordingly, the regulations of the respondent, when properly construed, do not apply to petitioners' business. For these reasons the judgment of the Court below should be reversed and the Court directed to dismiss the complaints.

Respectfully submitted,

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